IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 449 of 2001

with

CIVIL APPLICATION No 12193 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAKINABAI D/O ABDULLABHAI HAIDERALI BAJOWALA

Versus

SALIM ISMAIL UMARJI KHAIYA

Appearance:

1. Appeal from Order No. 449 of 2001

MRS KETTY A MEHTA for Appellant No.

MR SURESH M SHAH for Respondent No. 1-2

..... for Respondent No. 3

MR DN PANDYA for Respondent No. 3/1-3/2

MS D S PANDIT AGP for Respondent No. 4-5

RULE SERVED for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/03/2005

ORAL JUDGEMENT

1.0 The appellant herein has challenged the order dated 24/09/2001 passed below exh.5 by the learned 3rd Joint Civil Judge (S.D.), Bharuch in Special Civil Suit No.266 of 2000, whereby the said application was rejected.

2.0 Mr.D N Pandya learned advocate appearing for respondents no.3/1 & 3/2 has contented that the legal heirs of Abdullabhai Haiderali Bajowala were not served before the trial Court and that they were not even heard before passing the order granting status quo. He has, therefore, submitted that the status quo granted by this Court may not be continued.

3.0 I have heard learned counsel for the parties and perused the relevant documents on record. By order dated 26/11/2001, this Court had stayed the operation of the impugned order, till the disposal of the matter. The appellant - original plaintiff had filed the aforesaid suit, wherein he had prayed to grant ex-parte interim injunction restraining defendants no.1 and 2 from dealing with the suit property bearing City Survey Ward No.4, Survey Register No.3852, admeasuring 106 sq.mtrs mutated in Municipal record at House No.D-1872 till the final disposal of the suit proceedings.

3.1 On perusal of the record, it appears that the property in question was purchased by registered sale deed on 06/03/2000 through the power of attorney holder by defendant no.1. The trial Court has rejected exh.5 application on the ground that the original plaintiff the appellant herein, had not filed the suit in question, when the original owner, Fakruddin Bajowala, was alive. It has concluded that the original plaintiff had failed to prove a prima facie and if injunction was granted in his favour, inconvenience would be caused to defendant no.1.

4.0 In view of the conclusion arrived at by the trial Court, instead of considering the matter on merits and deciding the rights of the parties at this stage, it would be appropriate to direct the parties to lead evidence before the trial Court. Hence, it would be appropriate to direct the trial Court to expedite the hearing of the suit in question while continuing the status quo granted by this Court till the disposal of the suit in question.

4.1 Accordingly, the trial Court is directed to expedite the hearing of the suit being Special Civil Suit No.266 of 2000 and to dispose it of within a period of six months, if it is already ripe for hearing; otherwise, within a period of one year from the date of receipt of writ of this order. Parties are directed to maintain status quo granted by this Court till the suit in question is disposed of.

5.0 This interim arrangement shall continue only till the suit pending before the trial Court is disposed of. Thereafter, it shall be open for defendant no.1 to oppose the extension of interim relief at the time of the disposal of the suit. The trial Court while considering the aspect of interim relief shall not extend it merely on the ground that it has continued since 2001. Since the status quo granted by this Court has affected only defendant no.1 who has purchased the suit property, the arguments advanced by the learned advocate for defendant no.3 have not been considered at this stage.

6.0 With the above observations and directions, the Appeal from Order stands disposed of. Office is directed to send writ of this order forthwith.

[K. S. JHAVERI, J.]

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